IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

SA.No. 743 of 1993(E)

AS.80/1990 of DISTRICT COURT, THODUPUZHA dt.12.11.1992
OS.676/1986 of MUNSIFF COURT, IDUKKI

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APPELLANT: RESPONDENT/ PLAINTIFF

THANKAPPAN, S/O.GOPALAN, AGED 46 YEARS,
RESIDING AT KIZHAKKEL HOUSE,
KADUVAKUZHI IN MALE THATTAKANNY
BHAGOM, IDUKKI VILLAGE
THODUPUZHA TALUK.

BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)
SRI.R.SUDHIR
SRI.P.GOPAL
SRI.N.MANOJ KUMAR

RESPONDENTS: APPELLANTS/ DEFENDANTS

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1. **THE STATE OF KERALA REP.BY THE DISTRICT COLLECTOR, IDUKKI.**

2. **THE DIVISIONAL FOREST OFFICER, MUNNAR.**

3. **THE FOREST RANGE OFFICER, NERIYAMANGALAM.**

4. **THE UNION OF INDIA, REP.BY THE SECRETARY, DEPARTMENT OF AGRICULTURE AND CO- OPERATION, KRISHI BHAVAN, NEW DELHI.**

BY SPL. GOVERNMENT PLEADER SRI.PRAKASH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 06 / 06 / 2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 743 OF 1993

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DATED THIS THE 6th DAY OF JUNE, 2007

JUDGMENT

Plaintiff in O.S.676 of 1986 on the file of Munsiff Court, Idukki is the appellant. Defendants are the respondents. Plaint schedule property is ten acres in Survey No.161/1 of Idukki Village which is admittedly part of the reserve forest. Appellant instituted the suit seeking a decree for permanent prohibitory injunction restraining respondents, the State of Kerala and the officials of the Forest department from trespassing into the plaint schedule property or destroying the improvements or evicting appellant from the plaint schedule property. It was contended that the plaint schedule property, a part of reserve forest, was encroached upon by the appellant and his father in 1967 and constructed a hut therein and started residing and the hut was numbered by Idukki Kanjikuzhi Panchayat and he has effected improvements like planting of coconut, arecanut, pepper wines, coffee, jack tree, etc and plaint schedule property is well demarcated on all sides with permanent boundaries. It was contended that appellant being a cultivator is entitled to the protection of Ext.A6 order issued by the State of Kerala in 1968

and Government have decided not to evict encroachers who encroached into the property of the Forest prior to 1.1.1977 and appellant being an encroacher, prior to 1970 cannot be evicted and therefore appellant is entitled to the decree sought for. The suit was subsequently got amended contending that he is entitled to get a declaration that he is entitled to the benefit of Ext.A6 order and in view of the policy decision of the Government, he is not liable to be evicted. Respondents filed a written statement contending that appellant has not been in possession of the plaint schedule property since 1967 as claimed and though he encroached upon the plaint schedule property, he was evicted and he is not in possession of the property and under Section 66 of the Kerala Forest Act, it is the duty of the police officials to evict encroachers of reserve forest land and appellant is not entitled to the decree sought for.

2. Learned Munsiff framed the necessary issues. On the evidence of PW1, DW1 and Exts.A1 to A6 and C1, learned Munsiff granted a decree holding that appellant is entitled to the benefit of Ext.A6 policy decision and therefore respondents are not entitled to evict him. Respondents were restrained by a permanent prohibitory injunction from trespassing into the plaint

schedule property. Defendants challenged the decree and judgment before District Court, Thodupuzha in A.S.80 of 1990. Learned District Judge, on reappreciation of evidence found that the evidence do not establish that appellant has been in possession of the property before 1977. The learned District Judge also found that Ext.A7 policy decision will not enable the appellant to get a declaration that he shall not be evicted and therefore set aside the decree and judgment passed by the learned Munsiff and dismissed the suit. It is challenged in the second appeal.

3. Though second appeal was admitted, no substantial question of law was formulated while admitting the appeal. The substantial questions of law which according to appellants arise for consideration are basing on the policy decision of the Government not to evict the encroachers into the reserve forest prior to 1.1.1977 and also relying on the provisions of Kerala Hillmen Rules 1964. The said rules was subsequently declared to be ultra vires by this court in **Eacheran Ittiathi V. State of Kerala**(1970 KLT 1069).

4. The learned counsel appearing for the appellant and learned Government Pleader were heard.

5. The plaint schedule property is admittedly part of the reserve forest. The case of the appellant is that he, along with his father encroached upon the plaint schedule property in 1967 and constructed a hut which was numbered by the panchayat and they effected improvements like planting of coconut, arecanut, pepper wines, coffee, jack tree, etc and therefore he cannot be evicted by the State. Relying on the policy decision of the Government, it was contended that appellant being an encroacher prior to 1977, is not liable to be evicted. Relying on Ext.A6 order, it was contended that as the appellant would come within clause 3(l) therein, he is entitled to be protected and therefore he cannot be evicted. It was also argued that as evidenced by Ext.C1 report, there are improvements in between 10 and 14 years at the time of inspection of the Commissioner and in such circumstances, appellant is entitled to be protected from eviction and if at all he can only be evicted as provided under the provisions of Kerala Land Conservancy Act.

6. Section 66 of the Kerala Forest Act enables every forest officer or police officer to summorily evict any encroacher of the forest land.

7. Section 66 reads:-

> "Power to prevent commission of offence:- Every Forest Officer and Police Officer shall prevent, and may interfere for the purpose of preventing the commission of any forest offence and shall have power to evict all encroachers and squatters from Reserved Forests or other lands under the control of the Forest Department and to confiscate or demolish any sheds or other structures put up in such lands. Forest Officers shall have the powers of the Police Officers for the purposes of investigation or prevention of forest offences and the collection of evidence".

8. Section 66 does not provide for any procedure like issuing a show cause notice or the encroacher being heard

before he is send out of the forest land. This court had occasion to consider whether such an encroacher is entitled to contend that he could be evicted only by recourse to the provisions of Land Conservancy Act in **Emarald Valley Estate V. D.F.O, Nenmara**(W.A.12/1978) and in **Ayyappan Sreedharan V. District Collector Quilon**(OP 1064/1976), this court repelled the contention of the encroacher that even if he is an encroacher he can be evicted only by recourse to Kerala Land Conservancy Act. It was held that Section 66 mandates that it is the duty of every forest officer to evict all encroachers and squatters from reserved forests or other lands under the control of the Forest department. Therefore contention of the appellant that he could be evicted only as provided under the Land Conservancy Act is not sustainable.

9. Though learned Munsiff granted the benefit of the policy decision and Ext.A6 order to the appellant, first appellate court rightly held that appellant is not entitled to claim any protection by relying on either Ext.A6 order or the policy decisions. At best Ext.A6 order would operate when the Government takes steps to evict encroachers. But an encroacher is not entitled to contend that Ext.A6 order cloath him with a right or a protection from

eviction. In such circumstances, first appellate court rightly held that appellant is not entitled to the decree granted by first appellate court. On the admitted facts and proved circumstances, no substantial question of law is involved in the appeal. Appeal is only to be dismissed.

10. Learned counsel appearing for the appellant then argued that appellant may be granted liberty to file a petition as provided under the Kerala Forest Settlement Rules, 1965. If the appellant has a right to move a petition under the Rules, he is certainly at liberty to file such a petition. But that will not enable the appellant to get any direction from this court in his favour in this appeal. The appeal is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-

M.SASIDHARAN NAMBIAR, J

S.A.NO.743/1993

JUDGMENT

6th JUNE, 2007